

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

INITIAL STATEMENT OF REASONS

Hearing Date: June 10, 2003

Subject Matter of Proposed Regulations: Limited Permits, Fees, and Disciplinary Guidelines

Section(s) Affected: Title 16, Division 39, California Code of Regulations, Sections 4123, 4130, and 4144.

Specific Purpose of Each Adoption, Amendment or Repeal:

The purpose of proposing California Code of Regulations Section 4123 is to establish, define and clarify the basis upon which limited permits are granted for the purpose of providing occupational therapy services. The proposed regulation establishes the process and time frame upon which applicants shall complete the national licensing/certification examination once the education and experience requirements have been met. The proposed regulation establishes that limited permits shall be valid for a period of four months or upon receipt of a failing result, whichever occurs first. The proposed regulation establishes that limited permit holders shall immediately notify the Board of the examination results. The proposed regulation establishes that the limited permit fee submitted by applicants shall be applied toward the initial licensing/certification fee should the limited permit holder pass said examination on his/her first attempt. The proposed regulation further specifies that upon notification from the test administrator or limited permit holder, the limited permit shall be cancelled and the fee forfeited in the event the limited permit holder fails the first examination.

The purpose of the proposed amendments to California Code of Regulations Section 4130 is to establish a \$50.00 application processing fee. The proposed amendment additionally deletes language pertaining to the initial license, certificate, and limited permit fees that are no longer in effect.

The purpose of proposing California Code of Regulations Section 4144 is to establish and define Disciplinary Guidelines. Disciplinary Guidelines shall be used as a tool to assist attorneys, administrative law judges and the Board in making fair and consistent rulings throughout the state regarding appropriate sanctions for violations of the Occupational Therapy Practice Act (OTPA). The Disciplinary Guidelines provide minimum and maximum penalties for specific violations of the OTPA and offer standard and optional probationary terms when probation is determined to be the appropriate sanction. The Board recognizes that the proposed Disciplinary Guidelines are merely guidelines and if needed, they provide latitude for deviations in penalties due to the presence of mitigating factors.

Factual Basis/Rationale

Section 4123: To obtain a regulatory license for an occupational therapist or occupational therapy assistant, one must complete specific education and experience requirements, as well as successfully complete a national licensing/certification examination. Pursuant to Section 2570.5 of the Business and Professions Code, the Board has the authority to issue a limited permit to persons who have completed the educational and experience requirements for licensure, while awaiting to participate in the first available national licensing/certification examination. Effective February 2003, the National Board for Certification in Occupational Therapy (NBCOT), the agency that administers the national examination, abolished the pre-established testing periods (four times annually) and implemented testing on a continuous basis. As a result, the Board must establish and define what constitutes the “first available” examination.

At its September 21, 2002, Board meeting, the Board determined that four (4) months is sufficient time for an individual to apply for and take the national examination once all education and experience requirements have been met. Four months is needed to apply for, study, and take the examination, as well as allows time for individuals to gain additional experience. As a result, the Board also determined the limited permit would be valid for a period not to exceed four (4) months. The Board also determined that if a limited permit holder passes the first examination, the limited permit fee shall be applied toward the initial license or certification fee. The underlying principle for applying the limited permit fee toward the initial license/certification fee is based on the fact that the limited permit fee of \$100.00 in addition to the initial license or certificate fee of \$150.00 would result in an exorbitant cost to the applicant and would not be reasonable or fair given that the limited permit is valid for only four (4) months or less. The proposed regulation also requires limited permit holders to provide immediate notification to the Board of the results of the examination. This requirement is essential as applicants may receive notification of their test results prior to the Board receiving notification and in the event the permit holder fails the examination, the Board must cancel the limited permit immediately.

Section 4130: Senate Bill 2021 (Figueroa, Chapter 1011, Statutes of 2002) became effective January 1, 2003, granting authority to the Board to initiate an application processing fee of up to \$50.00. As a result, the application processing fee needs to be established in regulation. The proposed regulation also amends the Board’s fee schedule by deleting initial licensing/certification and limited permit fees that are no longer in effect.

Section 4144: Senate Bill 1244 (Figueroa, Chapter 1079, Statutes of 2001), grants the Board the authority to suspend, revoke, or place on probation the license or certificate of a person found to have engaged in unprofessional conduct. To be consistent and fair in determining the appropriate penalty for similar offenses, the Board must set forth, in regulation, disciplinary guidelines that specify minimum and maximum penalties for particular violations. Senate Bill 523 (Kopp, Chapter 938, Statutes of 1995) and Government Code 11425.50(e) provides that a penalty in an administrative disciplinary

action cannot be based on guidelines unless they have been adopted as a regulation in accordance with the Administrative Procedure Act. To comply with the aforementioned provisions, the Board is proposing regulations to establish disciplinary guidelines by incorporating by reference, “Disciplinary Guidelines 2002.”

When the Board makes a decision to go forward with formal disciplinary action, the offense is serious. If the Board is successful in proving its case, denial or revocation of the license may be warranted or a substantial penalty that will protect the public during the licensee’s rehabilitation period. A 30-day suspension and a probationary period of three years is the traditional time frame for suspension and probation with the exception of sexually related crimes or violations or excessive force, mistreatment or abuse to the patients, which warrant a 90-day suspension and 5-year probationary period. These time frames have proven to be an effective tool in monitoring a licensee’s performance, send a message to the licensee that the offense was serious, and give a period in which to set up a rehabilitation plan, when applicable. To the extent that a licensee can demonstrate rehabilitation in a shorter period of time, he or she can petition for early termination of probation.

The Board is mandated to regulate the practice of occupational therapy in the interest and for the protection of the public’s health, safety, and welfare. It is anticipated that the Board will have an active enforcement program, necessitating the establishment of disciplinary guidelines. The guidelines will assist attorneys, administrative law judges, and the Board in rendering fair and consistent disciplinary sanctions on a statewide basis.

Underlying Data

“Disciplines Guidelines 2002”

Business Impact

These regulations will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

The proposed regulations would affect only those individuals pursuing a license or certification as an occupational therapist or occupational therapy assistant.

Description of alternatives which would lessen any significant adverse impact on business:

No alternatives were presented to or considered by the Board that would either be more effective than or as effective as and less burdensome on affected private persons.

Specific Technologies or Equipment

These regulations do not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternatives to the regulations would be either more effective in carrying out the purpose for which the actions are proposed or as effective and less burdensome on affected private persons than the proposed regulations.